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# CITY OF NEWTON, MASSACHUSETTS

## CONSERVATION COMMISSION

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### MEETING MINUTES

June 23rd, 2011

Beginning at 7:30 p.m.

City Hall, Room 209

Meeting called to order at 8:44 p.m.

Setti D. Warren  
Mayor

**MEMBERS PRESENT:** I. Wallach, (Chair), S. Lunin, J. Hepburn, D. Dickson, N. Richardson, R. Matthews, and Alternate(s): J. Sender, and presumptive alternates, Barbara Huggins, Bob Unsworth, and Rich Gallogly

Candace Havens  
Director  
Planning & Development

**MEMBERS ABSENT:** D. Green

**MEMBERS OF THE PUBLIC:** Nathan Robbins, and see attached sign-in sheet

Anne Phelps  
Sr. Environmental Planner

\***Alderman Sangiolo** wishes to address the Commission regarding the MWRA Shaft 5 blow-out and and dredging in the Charles for mitigation (not on the published agenda)

**Meeting:** Aldermen Amy Sangiolo addressed the Commission with her concerns about MWRA's process in filing with the Weston conservation commission, but not in Newton. Because the original blow-out occurred in Weston, the MWRA needed an Emergency Certification from the Weston conservation commission to do the repairs, and the Emergency Certification process usually (as in this case) requires a follow-up filing of a Notice of Intent to restore the bank and nearby areas affected. Since that time, the MWRA has been in a ~year-long discussion with the Weston conservation commission, and MA Department of Environmental Protection about additional mitigation for the blow-out. The main discussion has concerned the removal of sediment that was washed into the Charles when the pipe burst and the water flowed down the bank to the Charles, carrying large amounts of sediment with it. Alderman Sangiolo said that the Charles River Watershed Association and the Lasell Boat Club are also interested. Aldermen Sangiolo suggested the commission invite the MWRA in to talk to them in July. The Env. Planner said the MWRA has indicated they intend to file with the Newton commission in July for the dredging.

Members

Ira Wallach, Chairman  
Susan Lunin, V-Chairman  
Judy Hepburn, Secretary  
Norm Richardson  
Roger Matthews  
Dan Green  
Doug Dickson  
Jane Sender, Alternate

**Stream Maintenance RDA-DPW** seeks approval for manual to do normal stream maintenance in perennial and intermittent streams throughout Newton

**Report:** The stream maintenance plan was developed in 2005 and submitted with a RDA. It expired in 2008. The plan is being re-submitted with minor modifications, and a list of proposed projects for 2011—see letter dated 2011 from Ted Jerdee, and requests for work on Cheesecake Brook & South Meadow Brook. All work has been discussed with DPW, and Env. Planner recommends approval of a negative determination (Negative 2, 3 AND 4) with conditions:

**1)** As outlined in the Manual, a representative from the DPW will appear before the Commission at the beginning of each year to show the Commission the maintenance plan and schedule for that year and outline the type of work and the performance standards to be met as outlined in the Manual. Once approved, 72-hour notice to the Commission of the start of individual projects is required.

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2) Pre- and post-maintenance photographs shall be taken and placed into the DPW and Conservation copies of the Manual to keep accurate records. Written reports outlining the work shall also be placed in the Manual.

3) More extensive work than that anticipated in the Manual must be the subject of a separate Notice of Intent filing and abutter notification.

4) In emergency situations, the DPW may use equipment to abate the emergency, but no additional work should be undertaken without permission from the Commission. In addition, the work completed during the emergency should be modeled on the standards already in the Manual. Written reports shall be generated and placed in the Manual.

**Meeting:** Ted Jerdee, Superintendent of Utilities, was present to describe the updates to the manual. He explained that not much stream maintenance has been performed since the last Determination expired in 2008, except for Beethoven Brook, primarily because stream maintenance is performed only on streams with altered banks and/or bottoms and only under “demand” situations; there is no “regularly scheduled” maintenance. Changes submitted are documented in a letter dated June 2, including p. 16 section 4.3, 4.3.1, page 18 section 5.1, and in a revised Section 2.1 for Beethoven Brook, which was determined by the commission to be non-jurisdictional during a prior hearing. T. Jerdee said that he will notify the commission/Env. Planner prior to doing any work in Beethoven Brook. He is proposing work on Cheesecake Brook, including removal of vegetation and hand replacement of stones to the walls. Work on South Meadow Brook will be conducted under an OOC (DEP 239-614) issued on 10-4-2010. **Motion to issue negative determination (negative 2, 3, and 4), with conditions recommended above. Motion seconded and amended to add condition that a new RDA be submitted when this Determination expires. Vote: All in favor. Motion passed.**

**30 Beethoven Av. Zervas School RDA-**Building Department requests installation of new modular classroom and after-the-fact installation of paving in buffer to bordering vegetated wetland

**Report:** Requested additional information-received revised plan and narrative. New proposal to remove asphalt, put the modular on pilings, and install walkways. Removal of asphalt is correction for a violation (installation of impervious surface without a negative determination or an Order of Conditions). Whether the modular sits atop asphalt, or sits on pilings, there is a request to approve an increase of ~2500 sf of impervious surface in a buffer zone, and no answer to my question of how they will address the storm water regulations (310 CMR 10.05(k)1.-8., (m), and (O) – infiltration recommended but not included in proposed work – please explain rationale). Also, several years old OOC issued to PTO to put playground in corner immediately adjacent to bordering vegetated wetland (corner of chain-link fence abutting swamp)- has expired and no Certificate of Compliance issued.

**Meeting:** Stephanie Gilman, Director of Public Buildings, and Sandy Brock, Nitsch Engineering, were present to describe the project. S. Gilman said the modular classrooms are considered “temporary” but will be in place 15-20 years. A small walkway will be put around the modular. A paved area was installed with no permits, and will be removed; the area of pavement was treated as grass for stormwater calculations. All work will be approximately 50 ft from the fence, which runs approximately along the wetlands line. There is also a playground area in the rear corner of the lot abutting the wetland. The plantings required by the OOC were not installed. The commission should be aware of this outstanding issue, but Env. Planner said it does not have to affect this project. **Motion to issue a negative Determination #3, to install modular and carry out infiltration of storm water with removal of pavement which was installed without a permit. Crushed stone to be placed under the building and downspout as shown in detail plan submitted this meeting for infiltration of storm water. Motion seconded. Vote: All approved. Motion passed.**

**687 Watertown St. Horace Mann School RDA-** Building Department requests installation of new modular classroom partially in the riverfront to Cheesecake Brook

**Report:** The site is on the corner of Watertown St. and Albemarle Rd., and fronts on Albemarle. On the left side of the lot, the driveway goes to a rear parking lot – this part of the parcel extends farther back than the

rest of the parcel. Cheesecake Brook, perennial, runs along Albemarle, and flows in a stone open channel. The wetland delineation of mean annual high water (MAHW) included observations of multiple signs that bank-full conditions are frequently higher than the top of the stone channel. Thus the riverfront area extends slightly farther onto the site than previously thought. Site had a massive oil spill (heating oil) in 1998, and a large amount of surface soil was removed. A pumping "station" is located behind the building and within 10-15 ft of proposed new building. Ground-water is still contaminated. The pump brings it to the surface, where oil is skimmed off and routed to a barrel for storage. The site LSP should be consulted for any proposed changes to the site.

Applicant should be asked to provide the following additional information:

- 1) Size of proposed addition
- 2) SF of impervious in riverfront
- 3) Storm water calculations to address pre- and post- run-off rate
- 4) If calculations indicate post run-off rate higher than pre-construction run-off rate, design plan for infiltration of run-off is required (and must satisfy LSP)
- 5) Clear statement of how the project meets the state storm water regulations (310 CMR 10.05(k)1.-8., (m), and (0))
- 6) Proposed mitigation for loss of vegetated surface (DEP recommends 2:1, but replacing grass with woody vegetation is an improvement so the commission may accept much less than 2:1 mitigation)

**Meeting:** Stephanie Gilman, Director of Public Buildings, and Sandy Brock, Nitsch Engineering, were present to describe the project. The modular would be in the outer 100 ft of riverfront area, with Albemarle Rd. between the work and the river. The proponents have consulted with Ralph Tella (the City's LSP consultant), who suggested the runoff be directed off the property to abutting property (Newton Boys and Girls Club). Another alternative is to direct roof runoff from the older modular on the site to the green area adjacent Watertown St. Applicant is proposing same approach (as with Zervas, above) of crushed stone underneath the new modular. Env. Planner thinks any planting would be an improvement, and suggested three medium sized shrubs on river side of property. The commission asked whether there are any vapor intrusion issues. The soil is now considered clean, but the groundwater still considered contaminated. **Motion to issue negative Determination #2 with condition of infiltration of storm water as described and mitigation plantings to consist of 3 shrubs mutually agreeable to S. Gilman and A. Phelps. Second. Vote: All in favor. Motion carried.**

**Commonwealth Av. Bridge RDA-** MA DOT to install shoring beam in flood zone

**Report:** Need filing fee (\$50.00), and more detail on how rip-rap will be removed and re-installed, how H-beam will be anchored on site. Do not have engineering comments, yet. Work is above the bank, in the 200 ft riverfront, already altered by original installation of bridge. However, compensatory flood storage (see 10.57(1) and (4)(a) and Sec. 22-22, Newton Revised Ordinances) of ~.7 cy (> 1 cf) is needed. This can likely be provided by permanent removal of one piece of the very large stone used as rip-rap.

**Meeting:** Karen Bartholomew, Charlie Guido, SPS New England, and Jonathan Ranteri, MA DOT were present for the project. K. Bartholomew said rip-rap will be moved by hand and with crow-bars. It will take 3-5 days to repair the concrete. Priscilla Leite, who lives nearby, asked if she could be notified when work will begin, and MA DOT agreed – Ms. Leite will notify neighborhood. Env. Planner said negative determination #2 is appropriate, on (recommended) condition that 1) demolition blanket be placed and monitored so as to catch any debris that falls during proposed work, and remove and dispose of any debris appropriately, and 2) provide 48 hrs notice to Env. Planner to observe erosion and control in place, 3) remove 1 piece of rip-rap for each beam support for compensatory flood storage. **Motion to issue negative Determination #2 with conditions of using demolition blanket to catch debris, and netting on sides to prevent lateral movement of debris from falling in the river, and no concrete washout in riverfront area. Motion seconded. Vote: All in favor. Motion passed.**

**100 Suffolk Rd.** RDA- Renovation of existing deck and existing sunroom in 100 ft buffer zone to bordering vegetated wetland

**Report:** No soil logs or plant data sheets submitted and soil is at surface in much of lawn area behind this structure. Not sure I agree with the wetland delineation – may be greater than flags. Applicant will likely say it does not matter, as the project is in the buffer zone and clearly not in the wetland, but it is very close to wetland, and once project begins, they may well decide more work and/or foundation work is needed. Current “foundation” is cinder block and/or thin slab, and the rest of house is in such poor repair (roof falling in) that I think it likely more work will be “required” once repairs have begun. There is no documentation offered from applicant to indicate how long they have been mowing wetland, or exactly how much wetland (see 10.55 , especially 10.55(2)3.) is being altered, but surrounding vegetation is indicative of how lush wetland area would be without mowing. If can document prior to WPA, then mowing would be ‘grandfathered.’ Exemption for mowing under riverfront act does not apply to BVW. Suggest request of additional information: 1) applicant be asked to document that mowing activity and extent of mowing pre-dated WPA, 2) soil logs and plant data sheets be submitted, and 3) site visit with whomever did delineation to observe soil samples. Regarding work as proposed , if delineation confirmed: 1) negative determination with conditions – a) any foundation work requires written request to commission whether NOI is required, b) no stockpiling off of driveway area, and any stockpiling must be covered with tied-down tarps, c) orange construction fencing to be placed at Env. Planner’s direction as limit of activity.

**Meeting:** Joe Porter, VTP, was present to describe the project. Wetland plant data sheets submitted. Still waiting for soil data sheets, and no designation on plan for where along line data taken. Soil data needed when wetland vegetation has been altered and trying to determine how close work is proposed to wetland. Commission asked J. Porter if he can provide additional information to document how long owners have been mowing wetland areas, and if he will agree to continue so he can provide that information. J. Porter agrees to continue to the July 28<sup>th</sup> meeting to provide requested information.

**31 Selwyn Rd. NOI** – Demolition and re-construction of single-family home in flood zone

**Report:** Although it is a large project, the main interest to be protected is compensatory flood storage (see 10.57(1) and (4)(a) and Sec. 22-22, Newton Revised Ordinances). The project has been designed to re-build close to the same footprint so as to eliminate the need for compensatory flood storage. I am waiting for Engineering’s review to see whether they meet this requirement. If so, recommend approval of OOC with special conditions: 1) no dumpsters stored on site, 2) no stockpiling of materials or of excavated soils for longer than 24 hrs on-site, and 3) control surface transport of sediment by lining down-slope catch basin grates and using rock on entrance/exit during construction.

**Meeting:** Owners Andrew and Christina Sam, and consultants Peter Gammie and John Shipes were present to describe the project. Project was designed so that proposed house is almost in the same location and has almost the same footprint as the existing house. There is a slight net gain of flood water storage volume, and a slight increase in impervious surface area (< 4%). Owners will try to infiltrate roof runoff. Motion to issue standard OOC with special conditions 1-3 as above. **Motion seconded and amended to allow stockpiling on site for 7 days instead of 24 hrs. (because a small amount of soil will be excavated and it will be put back around the foundation).** **Vote: All in favor. Motion passed.**

**33 Boylston St. Chestnut Hill Shopping Center RDA** – Replacement of two lighting structures in the 100 ft buffer to bank of Hammond Pond

**Report:** The only part of the proposed project within conservation jurisdiction are the two light poles that will be removed and replaced. They lie ~50 ft from bank and a negative determination with installation of silt fence between pavement and water is indicated – we may have to discuss best appropriate location and means of erosion and sediment control so as not to disturb bio-detention swales at edge of pond. Engineering and I have some additional questions regarding drainage and a tie-in to the 30-in pipe from Rte 9, but that will be addressed in their NPDES filing (and is not within the jurisdiction of the commission unless it will alter the pond).

**Meeting:** Jen Viarengo, Appledore Engineering and Frank Stearns, Esq., of K& L Gates, were present to describe the project. Owner plans to tear down and re-build a portion of one of the commercial buildings on the site (at 33 Boylston St.), re-grade and re-pave part of the parking lot, and increase the amount of parking. All proposed work is outside of the 100 ft buffer to bank, except for the replacement of two light poles. However, the work is extensive and some of the work could increase the amount of run-off into Hammond Pond. An area of asphalt parking will be converted to permeable pavers with a collecting basin and over-flow to the 30 in culvert. Erosion and sediment control is recommended and can be discussed with applicant at the time work begins.

J. Sender raised new topic, i.e., the issue of the Hammond Pond Stormwater Management Fund Agreement between the Board of Aldermen and Star Market, in which Shaw's shall pay \$150,000 to the City as a special revenue fund to be used to design, purchase, permit and install a Vortecnic unit to treat stormwater from Hammond Pond parkway and the Rte. 9 storm drainage system prior to discharge into Hammond Pond. Sr. Env. Planner noted that part of the Management Plan (developed prior to application for the 319 grant) included construction of a sediment fore-bay in Hammond Pond to receive sediment from the MA DOT pipe, where it could then be removed periodically. That would not be allowed by DEP.

**Motion to issue negative Determination #3, with condition to install erosion and sediment control between the work and the wetland. Vote: All approved. Motion passed.**

The commission asked that MA DOT, a representative of the engineering department, and a representative from Shaw's be invited to attend the next meeting of the commission to discuss the process and help understand the impediments to implementation to Phase 2 for Hammond Pond's Master Plan. Env. Planner will make contact.

**210 Nahanton St. RDA-** Nahanton Woods Condo. requests continuance to June 23<sup>rd</sup> meeting

**Report:** Awaiting requested information – nothing new at this time.

**Applicant request continuance to July 28<sup>th</sup> meeting.**

**Meeting:** The commission agreed to continue.

**MBTA Right of Way (through Webster conservation area) RDA-**Vegetation Management Plan continued from April & May

**Report:** Latest communication from consultant for MBTA is that no site visit until those wishing to do a site visit (me and?) take a 6-8-hr safety class. I asked DEP to contact the agents' listserv to see what is required in other locations. Responses are summarized in packet. Options suggested range from 1) requiring filing of a NOI (issuance of a positive determination – presumably based on assumption that so much wetlands in area of track, that inaccurate delineation (or failure to maintain markings along the track) will result in alteration of wetland resource area), 2) ask consultant to agree to continue indefinitely until I have time and attendance at this class can be arranged, AND NO SPRAYING UNTIL I DO SITE INSPECTION AND NEGATIVE DETERMINATION ISSUED, or 3) issue negative determination without a site visit. I do not think is a good idea to conduct an unauthorized site visit along the tracks.

**Meeting: Applicant requests continuance to unspecified time when Env. Planner can arrange to take safety training.** Commission members note the issue is confirmation of MBTA's wetland delineation and making sure their markers are clear and in place. One option might be to request photos in place of site visit. The commission thinks agencies should be more cooperative, and that the time spent in the indicated safety class is not reasonable. The rail line passes through a lot of wetland area; if the delineation is inaccurate or the markers are not properly maintained, the commission believes the work will alter the wetland vegetation. **Motion to issue a positive Determination #2b, #3, and #4. Motion seconded. Vote: All in favor. Motion passed.**

**Violations (new and updates):**

**73 Beaconwood Rd. EO-**Ratified at last meeting and amended to remove fill in 30 days

**Meeting:** Env. Planner has met with Mr. Hainey's wetland consultant, Mr. Wang, from Carr Research, who has indicated he may challenge the Commission's and DEPs determination that the area is bordering vegetated wetland. The commission indicated that if the owner does not meet the deadline to remove the fill, the Env. Planner should work with the Law Department to obtain compliance.

**320-322 Needham St. EO** – Correspondence from representative re restoration plan-Ira and Anne will write letter of reply

**Meeting:** Env. Planner reported she and Ira are still working on a letter.

**75-85-95 Wells Av. Violation-**Improper snow disposal

**Meeting:** Nothing new at this time.

**193 Oak St. Village Condos EO** – O&M plan to be approved

**Meeting:** Nothing new at this time.

**Certificates of Compliance:**

**36 Hyde Av.** – Requesting partial COC; mitigation planting area on-going

**Meeting:** EcoTec prepared plan for mitigation area that was submitted to the commission, including removal of invasives behind the house. When Env. Planner visited site following request for COC, there were more plants missing than reported by EcoTec, and the invasive plants (Japanese knotweed) had not been removed. Kenwood Builders has contract for removal of knotweed, using herbicide (poured into cut stem). It is working, but additional plants had not been installed as of last site visit. **Motion to issue partial Certificate of Compliance. Motion seconded. Vote: S. Lunin, J. Hepburn, R. Matthews voted "Aye." I. Wallach, N. Richardson, and D. Dickson voted "Nay." Motion does not carry.**

**386 Quinobequin Rd.-**Request, as-built plan, and surveyor's letter received

**Meeting:** Env. Planner said all work completed per plan and site visit confirmed area re-stabilized with lawn. **Motion to issue Certificate of Compliance. Motion seconded. Vote: all in favor. Motion passed.**

**Discussion/Reports:**

**Announcements, New & General Business:**

**May 26th, 2011 Meeting Minutes** for approval

**Meeting: Motion to approve May 26 meeting minutes. Motion seconded. Vote: All in favor. Motion passed.**